APPENDIX A

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County on the 9th day of December, 1955, the following order was made and entered, to-wit:

Amere Gas Utilities Company, Petitioner

vs.

The Public Service Commission of West Virginia,

Respondent

Upon petition for an appeal from and review and suspension of a final order made and entered by the Public Service Commission of West Virginia on the 30th day of June, 1955.

The Court, having maturely considered the petition filed herein on the 29th day of July, 1955, the record consisting of all papers, documents and evidence which were before the Public Service Commission at the hearing which resulted in the entry of the final order complained of; the statement of reasons of the Commission filed herein by the respondent, Public Service Commission of West Virginia, on October 14, 1955; reply of petitioner to said statement of reasons, filed on the 19th day of October, 1955; respondent's rejoinder to petitioner's reply to the Commission's statement of reasons, filed on the 31st day of October, 1955; and the oral argument of counsel on the 18th day of October, 1955, the date fixed by the Court for hearing upon the aforesaid petition; the Court is of

opinion that the petitioner has not shown itself entitled to the relief prayed for in its said petition.

It is therefore considered and ordered by the Court that the prayer of the petition for an appeal, review and suspension in this proceeding be and the same is hereby denied, with prejudice, for the reason that the final order of the Public Service Commission of West Virginia, dated June 30, 1955, is found to be plainly right.

It is further ordered that the record certified to the Clerk of this Court by the Public Service Commission of West Virginia, shall be held by the Clerk of this Court pending application by petitioner to the Supreme Court of the United States for a writ of *certiorari*. Judge Riley absent.

A True Copy Attest: KENNETH E. HINES
Clerk Supreme Court of Appeals

APPENDIX B

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA at the Capitol in the City of Charleston on the 30th day of June, A. D. 1955.

CASE NO. 4129

AMERE GAS UTILITIES COMPANY, a corporation
Investigation and suspension of rates and charges.

Motion for reopening and rehearing.

This proceeding came on to be heard this 30th day of June, 1955 for further consideration upon the proceedings heretofore had and orders entered pertaining to the matters involved herein; upon the petition of the respondent, Amere Gas Utilities Company, a corporation, for reopening and rehearing for the purposes mentioned in said petition, received March 7, 1955 and filed herein on March 24, 1955; upon the order made on March 24, 1955 reopening this proceeding for the purpose of giving the respondent an opportunity to introduce such evidence as it might have in support of Paragraphs "a", "b", "c" and "j" in its aforesaid petition and the protestants and Commission's staff an opportunity to introduce such evidence as they might have in support of their positions with respect to said Paragraphs "a", "b", "c" and "j" and denying said petition in all other respects; upon the evidence adduced at a hearing held herein on April 18, 1955; upon the record in Case No. 3888 and the entire

record in this case in so far as it pertains to the matters now involved in this proceeding by reason of the filing of said petition and the purposes for which it was set for hearing; and upon the memorandum of the petitioner, Amere Gas Utilities Company, received and filed May 13, 1955.

Upon consideration whereof it appears and the Commission finds that no useful purpose would be served by reiterating here what was said in Case No. 3888 and in this case pertaining to the matters involved herein further than to say that in so far as the quantity of gas available to the petitioner during the test period and the source from which it was obtained are concerned, the prayer of said petition should be denied for the reason that, in the opinion of the Commission, the testimony of George R. Heath, of the Commission's accounting staff, shows that a sufficient quantity of gas could and should have been made available to the petitioner during the test period in accordance with the plan fully set out in the Commission's report and order in said Case No. 3888 and in its order made in this case on February 25, 1955, without using any part of the so-called Thacker gas which could also have been made available to the petitioner during the test period.

Upon like consideration the Commission further finds that approximately 5½% should have been used in arriving at the tax savings instead of 8% referred to and used in said order of February 25, 1955, which makes it necessary for the petitioner to increase its rates as it is hereinafter authorized to do, and that in all other respects the matters involved in the aforesaid petition should be denied.

It is, therefore, ordered that the petitioner, Amere Gas Utilities Company, a corporation, be, and it hereby is, permitted and authorized to increase its rate for the first thousand cubic feet of gas used per month and the minimum monthly charge by five cents each in the entire territory served, making the rate applicable in Beckley, Mabscott, Lester, and Sophia, Raleigh County, Mullens, Wyoming County, and rural districts served in Raleigh and Wyoming Counties $1.35 for the first thousand cubic feet or less used per month and the minimum charge $1.35 in said areas, and the rate applicable in Athens and Princeton, Mercer County, Lewisburg, Ronceverte, and White Sulphur Springs, Greenbrier County, and rural districts served in Greenbrier, Mercer, and Summers Counties for the first thousand cubic feet or less used per month $1.40 and the minimum monthly charge $1.40 in said areas, effective July 1, 1955.

It is further ordered that in all other respects the prayer of the aforesaid petition be, and it hereby is, denied.

A Copy.

Teste: M. F. WRIGHT, JR.
Secretary

APPENDIX C

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA at the Capitol in the City of Charleston on the 24th day of March, A. D. 1955.

CASE NO. 4129

AMERE GAS UTILITIES COMPANY, a corporation
Investigation and suspension of rates and charges.

Motion for reopening and rehearing.

This proceeding came on to be heard this 24th day of March, 1955 for further consideration upon the duly verified petition of the respondent, Amere Gas Utilities Company, a corporation, received March 7, 1955, for reopening and rehearing of this proceeding for the purpose of giving the respondent an opportunity to introduce "newly discovered" evidence in support of the allegations set out in said petition.

Upon consideration whereof the Commission is of opinion and finds that this proceeding should be reopened for the purpose, and for the purpose only, of giving the respondent an opportunity to introduce such evidence as it may have in support of Paragraphs "a," "b," "c" and "j" in its aforesaid petition and the protestants and the Commission's staff an opportunity to introduce such evidence as they may have in support of their positions with respect to said Paragraphs "a," "b," "c" and "j"; and that in all other respects said petition should be denied.

The Commission further finds that the exhibits attached to said petition for reopening and rehearing of this proceeding should not be received and filed as a part of the record in this proceeding.

The Commission further finds that the order entered in this case on February 25, 1955 should continue and remain in full force and effect until and unless changed by a further order of the Commission.

It is, therefore, ordered that this proceeding be, and it hereby is, reopened for the purposes hereinbefore mentioned, subject to the limitations hereinbefore set out.

It is further ordered that the exhibits attached to the respondent's aforesaid petition and all reference in said petition to the same be, and they hereby are, stricken from said petition.

It is further ordered that after said exhibits and reference thereto have been stricken therefrom, said petition for reopening and rehearing be, and it hereby is, filed.

It is further ordered that the aforesaid allegations contained in Paragraphs "a," "b," "c" and "j" of the aforesaid petition be, and they hereby are, set for hearing in the Commission's Hearing Room at the Capitol in the City of Charleston on April 18, 1955 at 10 a. m. for the purposes hereinbefore mentioned.

It is further ordered that in all other respects the aforesaid petition be, and it hereby is, denied.

It is further ordered that the order entered in this case on February 25, 1955 shall continue and remain in full force and effect until and unless changed by a further order of this Commission.

It is further ordered that the Secretary of the Commission give notice to the respondent and to the protestants in this proceeding of the aforesaid hearing and the purpose thereof by mailing to each of them, by registered mail, a copy of this order.

A Copy.

Teste: M. F. WRIGHT, JR.
Secretary

APPENDIX D

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA at the Capitol in the City of Charleston on the 25th day of February, A. D. 1955.

CASE NO. 4129

AMERE GAS UTILITIES COMPANY, a corporation
Investigation and suspension of rates and charges.

This proceeding came on to be heard this 25th day of February, 1955 upon the revised tariff sheets offered for filing by Amere Gas Utilities Company, a corporation, hereinafter called "respondent," designated Fourth Revision of Original Sheet No. 8, P.S.C. W. Va. No. 2, canceling Third Revision of Original Sheet No. 8, and Third Revision of Original Sheet No. 8-A, P.S.C. W. Va. No. 2, canceling Second Revision of Original Sheet No. 8-A, issued August 9, 1954, effective November 1, 1954, stating increased rates and charges for furnishing natural gas service to its customers in West Virginia, except for sales to the Bluefield Gas Company, which rates are designed to increase the respondent's annual revenue $334,120, based on its sales during the test period used herein, which is for the twelve months ended August 31, 1954; upon the order entered herein on August 24, 1954 setting said matter for hearing and suspending the rates and charges stated in the aforesaid tariff sheets and deferring the use thereof until February 28, 1955 unless otherwise ordered by the Commission; upon proof of the

giving of notice of the filing of said tariff sheets as required by said order of August 24, 1954; upon the protests of the Citizens Committee of the city of Beckley, Raleigh County, and the City of Beckley, a municipal corporation, by Benjamin D. Tissue, attorney at law of Beckley, and the City of Princeton, Mercer County, by W. R. Carr, City Attorney; upon the evidence adduced at hearings held herein on October 14, 1954 and January 6, 7, and 28, 1955; upon the report and order made in Case No. 3888 and the entire record therein in so far as it pertains to the matter involved herein, which record was made a part of this proceeding by reference; upon that part only of the duly verified statement of R. J. Ryder, received February 14, 1955, pertaining to the inquiry made by the presiding commissioner at the hearing held herein on January 28, 1955, as shown at pages 385, 386, and 387 of the transcript of the reporter's notes taken at said hearing; and upon the petition of the respondent "to reopen this proceeding to permit the introduction of newly discovered evidence," received in the afternoon of Friday, February 25, 1955, making it necessary to rewrite this order.

From all which it appears that in its aforesaid report and order made on August 31, 1953 in Case No. 3888, the Commission set out, in detail, the reasons for the formula or plan it used in arriving at its conclusions therein; and that no useful purpose would be served by restating said conclusions here further than to say that the Commission's staff, in the preparation of their exhibit filed herein and the conclusions therein set out, followed substantially the Commission's formula used in Case No. 3888.

It further appears that the respondent disregarded—in fact, it seems that it ignored—the formula used by the

Commission in reaching its conclusions in its aforesaid report and order in Case No. 3888; and that the principal, if not the only reason assigned by the respondent for its failure to follow the Commission's said formula was that it would have conflicted in certain particulars with the procedure followed by the staff of the Federal Power Commission in determining the rate applicable to gas furnished by the Atlantic Seaboard Corporation to the respondent, which rate was subsequently reduced from 60 cents per thousand cubic feet to 40 cents or less, and by reason of the fact that Atlantic Seaboard Corporation had filed a tariff with the Federal Power Commission stating an increase of ten cents per thousand cubic feet in the rate for gas it sold to the respondent, or an increase from 40 cents to 50 cents per thousand cubic feet, which rate, in so far as the record in this proceeding shows, has not been approved by the Federal Power Commission.

It further appears that if the respondent had followed the Commission's formula in Case No. 3888 in the preparation of its exhibits for use in this proceeding, with such changes as it deemed necessary to conform to its experience during the test period used herein, much time would have been saved by the Commission's staff, as all that would have been necessary for them to do would have been to check the changes proposed by the respondent and prepare an exhibit showing the result of their conclusions with respect to said changes, and the matters involved herein could have been submitted to the Commission for decision at a much earlier date.

It further appears that the Commission recommended in its aforesaid report that the property of the respondent be merged with the property of the United Fuel Gas Company, for reasons stated in said report; and that in-

stead of said recommendation being followed, the stock of the respondent, at that time owned by the Atlantic Seaboard Corporation, was transferred by said corporation to the parent company, The Columbia Gas System, Inc.

It further appears that the total quantity of gas sold by the respondent during said test period, exclusive of the gas sold to the Bluefield Gas Company for resale, was 3,176,439 Mcf; that the quantity of gas used by the respondent in its operations was 46,730 Mcf or a total of 3,223,169 Mcf sold and used by the respondent during said test period, excluding the quantity sold to the Bluefield Gas Company, the total of which was 237,790 Mcf; and that the total quantity of gas available to the respondent during said test period, according to the formula used by the Commission in Case No. 3888, was 7,978,580 Mcf or 4,517,621 Mcf in excess of the respondent's total sales, including Bluefield and the gas it used in its operations during said test period.

It further appears that the respondent's average original cost rate base, its operating revenues and expenses, including provisions for a return of 6¼%, and the deficiency in its revenue for said test period, as determined by the Commission's staff, using the aforesaid formula in Case No. 3888, are as follows:

Average Net Original Cost Rate Base	
Gas Plant in Service	$3,850,646
Construction Work in Progress—Complete and in Service	40,330
Retirement Work in Progress	(3,893)
Less: Reserve for Depreciation and Amortization	593,201

Contributions in Aid of Construction	26,233
Total Net Investment	3,267,649
Working Capital	145,502
Average Net Original Cost Rate Base	3,413,151
Net Operating Revenues—Adjusted	
Operating Revenues—Gas	1,808,717
Operating Expenses—Gas	1,649,481
Net Operating Revenues—Gas	159,236
Deficiency at 6¼% Return	
6¼% Return on Rate Base (3,413,151 x 6.25%)	213,322
Less: Adjusted Net Operating Revenues	159,236
Deficiency Under Present Rates	54,086

In the preparation of the foregoing tabulation, the Commission's staff, at the suggestion of the Commission, did not deduct $2,296 representing material depreciation, and used tax savings of 8% instead of 8½%, both of which adjustments were made in P.S.C. Staff Exhibit No. 1.

It further appears that the contract under which the respondent was purchasing gas from the Columbian Carbon Company at Thacker, Mingo County was in effect during said test period and was not canceled until November 1, 1954 and by reason thereof the position taken by R. J. Ryder in his aforementioned statement and the position taken by the respondent in its aforementioned petition are untenable, as it was definitely understood at the hearing held herein on October 14, 1954 that only the experience of the respondent during said test period

would be considered by the Commission in arriving at its conclusions in this proceeding; and that by reason of said understanding the Commission's staff, in the preparation of their Exhibit No. 1, did not give any consideration to the fact that the Federal Income Tax which the respondent will be required to pay was reduced by the Congress from 52% to 47%, effective April 1, 1955.

It further appears that the effect—if not the purpose—of the respondent's filing of its aforementioned petition on February 25, 1955, for reopening of this proceeding, would be that the rates stated in its aforementioned revised tariff sheets would become effective February 28, 1955, just three days after the filing of such petition, two of which days are Saturday and Sunday, as the Commission cannot, under the law, further suspend the use of said rates.

It further appears that at the hearing held herein on January 6, 1955, Benjamin D. Tissue, counsel for the Independent Citizens Committee of Beckley and the City of Beckley, both of Raleigh County, made a motion, the effect of which was to cancel the aforementioned tariff sheets because the respondent had not followed the Commission's said formula in the preparation of its exhibits filed herein at the hearing held on October 14, 1954, which motion was renewed by said counsel near the close of the hearing held herein on January 28, 1955, as shown at page 71 of the transcript of the reporter's notes taken at said hearing of January 6, 1955 and at page 387 of the transcript of the reporter's notes taken at said hearing of January 28, 1955.

It further appears that shortly after this Commission, by order made in Case No. 3888 on March 26, 1953, au-

thorized the respondent to put into effect rates designed to increase its annual revenue by $183,099, the respondent, agreeable to an understanding had with the Federal Power Commission, reduced the rate at which it was furnishing gas to the Bluefield Gas Company, from 60 cents plus to something less than 40 cents per thousand cubic feet, a reduction of 33%.

Upon consideration whereof the Commission is of opinion and finds that the aforesaid petition filed herein by the respondent on February 25, 1955, "to reopen this proceeding to permit the introduction of newly discovered evidence," should be denied, for the reason that it was not timely filed and for the further reason that it would be more appropriate for the respondent to file such a petition after the Commission entered its final order in this proceeding, as provided by the Commission's Rules of Practice and Procedure.

The Commission further finds that the aforesaid motion of said Benjamin D. Tissue should be denied for the reason that the exhibit filed by the Commission's staff shows that there is a deficiency in the respondent's revenue for the test period used herein.

The Commission further finds that the aforesaid revised tariff sheets offered for filing by the respondent, designated Fourth Revision of Original Sheet No. 8, P.S.C. W. Va. No. 2, canceling Third Revision of Original Sheet No. 8, and Third Revision of Original Sheet No. 8-A, P.S.C. W. Va. No. 2, canceling Second Revision of Original Sheet No. 8-A, should be canceled and stricken from the tariff files of this Commission, for the reason that the rates stated therein are not just and reasonable in that they will produce revenue in excess of that neces-

sary to enable the respondent to pay its reasonable and necessary operating expenses, including taxes, and provide for depreciation in and a reasonable return on the value of its property as hereinbefore set out, or $3,413,-151, which amount the Commission fixes as the rate base in this proceeding.

The Commission further finds that the respondent's present rates are not just and reasonable in that the revenue realized by the respondent from their application is not sufficient for the aforementioned purposes, and that the rates hereinafter set forth are designed to produce additional annual revenue of at least $108,000, which is sufficient revenue for such purposes, including a return of 6¼% on the rate base hereinbefore fixed at $3,413,151.

It is, therefore, ordered that the aforesaid petition filed herein by the respondent on February 25, 1955, be, and it hereby is, denied for reasons hereinbefore stated.

It is further ordered that the aforesaid motion made by said Benjamin D. Tissue, counsel for the Independent Citizens Committee of Beckley and the City of Beckley, both of Raleigh County, be, and it hereby is, denied for reasons hereinbefore stated.

It is further ordered that said tariff sheets designated Fourth Revision of Original Sheet No. 8, P.S.C. W. Va. No. 2, canceling Third Revision of Original Sheet No. 8, and Third Revision of Original Sheet No. 8-A, P.S.C. W. Va. No. 2, canceling Second Revision of Original Sheet No. 8-A, be, and they hereby are, canceled and stricken from the tariff files of this Commission.

It is further ordered that the respondent, Amere Gas Utilities Company, a corporation, be, and it hereby is,

permitted and authorized to put into effect on February 28, 1955, the rates and charges hereinafter set out, for all gas furnished on and after said 28th day of February, 1955, as nearly as can be ascertained and determined from meter readings taken on and after said date, in lieu of its present rates and charges:

Applicable in Beckley, Mabscott, Lester, and Sophia, Raleigh County, Mullens, Wyoming County, and rural districts served in Raleigh and Wyoming Counties.

Available for general domestic, commercial, and industrial service.

Rate			
First	1,000 cubic feet or less used per month	$1.30	per thousand cubic feet
Next	1,000 cubic feet used per month	.73	per thousand cubic feet
Next	2,000 cubic feet used per month	.63	per thousand cubic feet
Next	96,000 cubic feet used per month	.48½	per thousand cubic feet
All over	100,000 cubic feet used per month	.47	per thousand cubic feet
Monthly Minimum Charge		$1.30	

Applicable in Athens and Princeton, Mercer County, Lewisburg, Ronceverte, and White Sulphur Springs, Greenbrier County, and rural districts served in Greenbrier, Mercer, and Summers Counties.

Available for general domestic, commercial, and industrial service.

Rate			
First	1,000 cubic feet or less used per month	$1.35	per thousand cubic feet
Next	1,000 cubic feet used per month	.78	per thousand cubic feet
Next	2,000 cubic feet used per month	.68	per thousand cubic feet
Next	96,000 cubic feet used per month	.62	per thousand cubic feet
All over	100,000 cubic feet used per month	.53	per thousand cubic feet
Monthly Minimum Charge		$1.35	

A copy.

Teste: M. F. WRIGHT, JR.,
Secretary

APPENDIX E

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, CHARLESTON

Case No. 3888

AMERE GAS UTILITIES COMPANY, a Corporation, Investigation and Suspension of Rates and Charges

APPEARANCES:

Charles C. Wise, A. M. Calland, and *Richard A. Rosan,* for Respondent;

Benjamin D. Tissue for the City of Beckley, protestant;

Fletcher W. Mann for the Independent Citizens Committee of the City of Beckley, protestant;

Ira M. Smith for the City of Princeton, protestant;

George L. Ballard for the Town of Sophia, protestant;

Ray Toler for the City of Mullens and the Chamber of Commerce of Mullens, protestants.

REPORT OF THE COMMISSION, *August 31, 1953*

BY THE COMMISSION:

This proceeding is before the Commission upon the revised tariff sheets offered for filing by Amere Gas Utilities Company, a corporation, hereinafter called "Respondent" or "Amere," which sheets were designated Third Revision of Original Sheet No. 8 to its Tariff P. S. C. W. Va. No. 2 and Second Revision of Original Sheet No. 8-A to said tariff, stating increased rates and charges for furnishing natural gas service to its customers in West Virginia, except sales to Bluefield Gas Company, which rates were designed to increase Respondent's annual revenue approximately $500,462, based on its 1952 sales. The

above mentioned revised tariff sheets were offered for filing on January 6, 1953, to become effective February 15, 1953. On January 8, 1953, the Commission entered an order suspending the use of the proposed increased rates until June 10, 1953, unless otherwise ordered by the Commission, and set the matter for hearing on February 24, 1953. At the hearing held on the last mentioned date, protests were made on behalf of the cities and organizations mentioned above, and numerous written protests previously received were noted in the record. After the completion of the Respondent's evidence at the last mentioned hearing, a motion was made on its behalf for an interim rate increase, pending examination of Respondent's books and records by the Commission's staff. By order of March 26, 1953, the Commission authorized Respondent to put into effect as of April 1, 1953, temporary rates designed to increase its annual revenues by approximately $183,099, which rates were put into effect upon the condition that should the Commission, in its final determination in this proceeding, find said interim rates to be excessive, refunds would be made by Amere to its customers as directed by the Commission. The Commission's staff made an examination of Amere's books and records, and at a hearing held herein on May 11, 1953, the results of this examination were introduced by the Commission's accountant, George Heath, along with other evidence on behalf of the Respondent and protestants. A final hearing was held on June 2, 1953, and this case was submitted for decision. On June 3, 1953, an order was entered further suspending the proposed increased rates until December 10, 1953, unless otherwise ordered by the Commission. Short briefs were filed on behalf of the various parties, the last of which was received on July 6, 1953.

History, Corporate Structure, Territory, and Growth of Amere

The predecessor of Amere, Beckley Gas Company, was organized in 1929. In 1930 the entire stock of the company was acquird by Columbia Gas & Electric Corporation (now The Columbia Gas System, Inc., hereinafter referred to as "Columbia"). In 1931 Atlantic Seaboard Corporation, hereinafter called "Atlantic," a subsidiary of Columbia, acquired from Columbia all of the capital stock of Amere, and Respondent remains a subsidiary of Atlantic, although negotiations are under way to make Amere a direct subsidiary of Columbia.

After the establishment of gas service in Beckley, the cities of Lewisburg, Ronceverte, White Sulphur Springs, Princeton, and Athens were added to the Respondent's system in the years 1931 and 1932 as a result of the construction by Atlantic of a 20-inch gas line from Boldman, Kentucky, to the eastern seaboard, which passed through the vicinity of these communities. Service to Mullens, Wyoming County, was begun by Amere in 1939. Altogether, as of December 31, 1952, Amere had 15,102 customers located in the following communities: Beckley, 7,246; Princeton, 2,478; Mullens, 992; Lewisburg, 940; White Sulphur Springs, 849; Mabscott, 634; Sophia, 632; Ronceverte, 573; Athens, 255; Lester, 122; and 381 rural customers. Of these customers, 13,505 are residential, 1,488 are commercial, 87 are municipal and public, and 22 are industrial. The system is divided into three distinct sections, namely, the Beckley-Mullens area, the Princeton-Athens area, and the Lewisburg-White Sulphur Springs area, and these sections are not interconnected by lines of Amere, but they are connected by the aforementioned 20-inch line of Atlantic.

Amere has had a constant and rapid growth, both in customers served and gas sold, as is illustrated by the fact that in 1931 it had an average of 1,102 customers using an average of 102 Mcf of gas annually, resulting in total annual sales of 112,580 Mcf, as compared to an average of 14,370 customers using an average of 203 Mcf annually, resulting in total annual sales of 2,926,036 Mcf in 1952. Amere originally purchased its entire gas supply from Ravencliffs Development Company, hereinafter called "Ravencliffs," which gas was used in furnishing service in Beckley, and this company is still the largest local supplier of gas to Amere. As heretofore noted, it was not until Atlantic constructed its 20-inch line that gas was made available to the Princeton-Athens area and the Lewisburg-White Sulphur Springs area, and no local gas has ever gone directly to these last mentioned areas, as the distribution system serving these areas is connected directly to Atlantic's line.

Amere also delivers gas to Bluefield Gas Company, which gas is originally furnished by Atlantic to Amere and transported through the latter's lines to a point near Princeton where it is taken by Bluefield Gas Company. Amere is paid a transportation charge for handling this gas. The rates to Bluefield Gas Company are under the jurisdiction of the Federal Power Commission and are not involved in this proceeding.

Gas Supplies and Purchases

As hereinbefore noted, Ravencliffs was the original local supplier of gas to Amere for the Beckley area. During the year 1952, Amere purchased from Ravencliffs 887,476 Mcf of gas and from other local suppliers the following amounts: Columbian Carbon Company, 647,-

406 Mcf; Hope Natural Gas Company, 92,886 Mcf; Owens-Libby-Owens Gas Department, 16,053 Mcf; and Ragland & Blackshear, 3,188 Mcf. These local purchases of gas total 1,647,009 Mcf for 1952. During the same period Amere received 1,473,090 Mcf from Atlantic, and exchanged 105,321 Mcf with Atlantic, making a net purchase from this source of 1,367,769 Mcf, and total purchases from all sources of 3,014,778 Mcf. For the purposes of this proceeding the calendar year 1952 has been adopted as the test period by the Respondent and accepted by the Commission.

Under an agreement with Atlantic, Amere delivers to Atlantic any surplus gas it has purchased from local producers, and at a later date Atlantic returns this gas to Amere. This procedure accounts for the 105,321 Mcf mentioned in the above paragraph. However, gas purchased from Columbian Carbon Company, hereinafter called "Carbon," is not included in this exchange agreement. There is a contract between Carbon, on the one hand, and Amere and Atlantic, on the other, which provides that Amere may take all of the gas it can use from Carbon's available supplies and that Atlantic will take all of the surplus. Carbon furnishes this gas at 24¢ per Mcf during the months of January, February, March, April, November, and December, and at 22.5¢ per Mcf for the remaining six months. It is the contention of the Commission's staff and of the protestants that there is no reason for treating the gas purchased from Carbon differently from that purchased from other local producers and that all of the Carbon gas should be sold to Amere, and that that portion delivered by Amere to Atlantic should be returned by Atlantic to Amere as exchange gas. This would result in a substantial saving to Amere because

Amere is now required to pay approximately 62¢ per Mcf for all gas purchased from Atlantic; whereas, as heretofore noted, the purchases from Carbon range from 22.5¢ to 24¢ per Mcf. It is further contended that this gas purchased from Carbon is transported through Amere's lines for a distance of 27 miles before being delivered to Atlantic's line, and that no charge is made to Atlantic for this transportation. In reply to this contention, the Respondent points to the contract with Carbon, to which Atlantic is a party, and contends that Carbon would not have entered into a contract with Amere alone. The Commission is not impressed with the contention of the Respondent that Carbon would not have entered into a contract with Amere individually. Amere is a subsidiary of Atlantic, and any contractual obligations undertaken by Amere are substantially guaranteed by its parent company. This contract has never been filed with or approved by this Commission. Further, Hope Natural Gas Company, one of the largest gas utilities in this state, entered into a contract with Amere alone. The Commission is not advised of the reasons of the Respondent or of its parent company for handling the purchases from Carbon as they do, but whatever their reasons may be, no justification has been shown in this proceeding for such method of operation; and as this manner of handling the gas is obviously detrimental to Amere's West Virginia customers, the Commission will treat all of the gas delivered by Carbon as being to the account of Amere, and that portion of the Carbon gas taken by Atlantic to be on an exchange basis with Amere the same as the other locally produced gas.

Staff Exhibit No. 1, page 2, shows Atlantic purchased from Carbon 627,476 Mcf of gas at 14.73 pound pressure

base during 1952. As the Commission deems that this gas should have been purchased by Amere and exchanged with Atlantic the same as the 105,321 Mcf purchased by Amere from other local producers, Amere's net purchases from Atlantic, excluding purchases for Bluefield Gas Company, for the test period should be reduced from 1,195,530 Mcf to 568,054 Mcf.

As to this remaining 568,054 Mcf of gas purchased from Atlantic by Amere at an average of 62¢ per Mcf under a contract on file with the Federal Power Commission, Heath has treated this gas as being properly subject to an exchange contract between the two companies, and under this hypothetical exchange agreement has charged Amere 40¢ per Mcf. This method, including the adjustment of the Carbon gas, results in a saving of $358,807 to Amere for the test period. In support of this method of handling sales between the two companies, Heath points out that in a recent rate proceeding before this Commission the evidence showed that Cumberland and Allegheny Gas Company and The Manufacturers Light and Heat Company, both Columbia subsidiary companies operating in the northern portion of West Virginia and in Pennsylvania and Maryland, are exchanging gas under a similar agreement. The agreement between the two last mentioned companies is on file with the Federal Power Commission, as is the agreement between Atlantic and Amere, and gas is exchanged at 37¢ per Mcf. During the twelve-month period ended May 31, 1952, Cumberland delivered to Manufacturers 1,772,826 Mcf and Manufacturers delivered to Cumberland 711,954 Mcf, resulting in Manufacturers receiving a net of more than one million Mcf under the exchange agreement. Heath states that there is no reason why Amere should not benefit from

such an exchange agreement with Atlantic in the same manner that Manufacturers benefits under its agreement with Cumberland, and that in his opinion 40¢ per Mcf is more than the cost of the service to Atlantic. To illustrate the inequities of the price Amere is required to pay Atlantic for gas, Heath also notes Amere's location with reference to the source of supply of gas. Flat Top, the point where Amere takes a large amount of gas from Atlantic, is 91.2 miles from Boldman, Kentucky, the beginning point of Atlantic's 20-inch line, and Washington, D. C., is 257.7 miles beyond Flat Top; yet Atlantic supplies gas to Washington, D. C., at only one cent more commodity charge and only ten cents more demand charge than it does to Amere at Flat Top. Obviously, the Federal Power Commission approved rates of Atlantic give only token consideration to the fact that Atlantic's West Virginia and Kentucky customers are much nearer to the source of supply than its Virginia and Maryland customers. As a matter of fact, this works only to the detriment of Amere, a Columbia controlled company, as it is the only customer of Atlantic in West Virginia or Kentucky, and to the benefit of gas distributing companies in Virginia, Maryland, and Washington, D. C., that are not Columbia companies. The record further shows that during the months of June, July, and August, 1952, Amere purchased no gas from Atlantic; yet under the agreement between the two companies on file with the Federal Power Commission, Amere had to pay Atlantic $101,228 as a result of the demand charge.

The Commission is reluctant to accept adjustments that are not based upon actual operation, and if the situation described in the preceding paragraph were the whole story, the Commission might reluctantly feel bound to

allow as a proper operating expense of Amere the 62¢ per Mcf it pays Atlantic for the 568,054 Mcf of gas received from Atlantic, after deducting the sales of Carbon to Atlantic. However, a part of this whole picture is the United Fuel Gas Company, hereinafter called "United," the supplier of the great portion of Atlantic's gas. United is also a Columbia subsidiary. In addition to distributing gas at retail in large sections of central and southern West Virginia, it is also the main supplier of gas to the whole Columbia system. United produces and purchases gas locally in West Virginia and Kentucky and also purchases gas from the transmission companies that bring gas from the southwest. All of the gas that goes into Atlantic's 20-inch line at Boldman, Kentucky, is supplied by United and is locally produced and purchased gas. Atlantic pays for this gas, and all other gas it obtains from United, under a Federal Power Commission tariff, and the average price for 1952 was approximately 26.5¢ per Mcf. However, the gas Atlantic delivers to Amere is not necessarily Kentucky gas that has been transported 91.2 miles to Flat Top, but at least a portion of such delivery is gas that Atlantic has transported only 28 miles. This results from an arrangement whereby United has gas that it produces or purchases in McDowell County transported for it by Godfrey L. Cabot, Inc., to Atlantic's 20-inch line at what is known as Brier Creek delivery point, located 11 miles west of Mullens. Information Exhibit No. 1, which was introduced in this proceeding at the request of the Commission, shows that this McDowell County gas is delivered to the account of United by Cabot at Meter No. 2063 on Atlantic's line, and Atlantic is billed for same under the last mentioned Federal Power Commission tariff. Under this arrangement Atlantic may then transport this gas, which cost it not more than 26.5¢ per

Mcf at Brier Creek (and for which Atlantic paid Cabot only 25¢ prior to September 1, 1952), to Flat Top, a distance of only 28 miles, and deliver it to Amere at 62¢ per Mcf. During the last four months of 1952 United delivered 802,470 Mcf of gas to Atlantic at Brier Creek, which is more gas than Amere purchased from Atlantic for the whole year, after deducting the gas Carbon sold to Atlantic.

In addition to its sales to Atlantic, United sells gas to several other Columbia companies. The territory served by Amere is in close proximity to that served by United. There is no reason why United could not be the direct supplier to Amere. If, in some instances, Atlantic's 20-inch line were required to transport the gas thus sold to Amere, Atlantic could be paid a reasonable transportation charge. This is a practice often followed by gas utilities, including the Columbia companies. Although Amere might not be able to obtain from United a rate as advantageous as the 26.5¢ per Mcf enjoyed by Atlantic, certainly this method of supplying gas to Amere would result in its paying less than the 40¢ per Mcf allowed by Heath in his computation of operating expenses. Considering all of the aforementioned factors, the Commission finds that said 40¢ per Mcf rate Heath has used is fair and equitable, and it will be adopted for the purposes of this proceeding.

As before mentioned, Columbia contemplates purchasing the stock of Amere from Atlantic, thus making Amere a direct subsidiary of Columbia. As Amere is located within the general territory of United, which is a much larger utility, it would seem feasible to merge the properties of Amere with United and thus solve the problems that arise from intercompany sales. If this merger were

consummated, United would then pay Atlantic a transportation charge for any use made of its 20-inch line, and Federal Power Commission commodity and demand rates would not be involved. United and Amere now have the same executive officers and the same home office, and the corporate records are kept at the same location. The Commission hopes that under these circumstances Columbia will reconsider its decision to make Amere a direct subsidiary and, instead, merge the Amere properties with United. In this manner the present customers of Amere would receive the benefit of being part of United, to which they are entitled, instead of the burden that is now imposed upon them as a result of the present corporate setup.

Operating Expenses

Operating expenses for the year ending December 31, 1952, were shown by the Respondent's books to be $1,425,626. Due to changes that occurred during the year, it is necessary to make certain adjustments in these amounts to arrive at a going level of operating and maintenance expenses as of December 31, 1952. These adjustments include increases in labor costs, increases in cost of gas purchased from local producers, as well as from Atlantic, and small adjustments in certain other items, which result in adjusted operating and maintenance expenses of $1,523,951 according to Amere's exhibits. Heath, in his exhibit, agrees substantially with the position of the Respondent except as to gas purchased from Atlantic by Amere, discussed at length in the preceding section. For the reasons stated therein, Heath's adjustments as to the cost of gas, and other minor adjustments shown in his exhibit, are accepted by the Commission for the purposes of this proceeding. This results in adjusted operating ex-

penses of $1,168,031 for the test period, which is $355,920 less than claimed by Amere.

Rate Base

The Respondent's rate base, as set forth in its exhibits, is based upon original cost of the property. This rate base was arrived at by taking the total gas plant in service as of December 31, 1951, which amounted to $3,149,453, and the total as of December 31, 1952, which amounted to $3,604,099, and averaging these two amounts results in an average gas plant in service of $3,376,776. This method of arriving at the value of the gas plant in service is the same as that used by the Commission in recent years in all of the rate proceedings before it involving major utilities. It is also the same method followed by the Federal Power Commission and a great majority of state regulatory agencies. The use of this method at the present time results in placing a lesser value on the utility's property than would be arrived at if a reproduction new or fair value rate base were established, but the Commission believes the original cost rate base to be the fairest means of valuing a utility's property and not subject to the constant variations inherent in the reproduction new method, which variations may from time to time, depending on current economic conditions, unduly favor either the utility or the consumer.

The rate base presented by the Respondent and that presented by the Commission's accountant, Heath, are nearly the same, Heath's rate base being slightly higher than claimed by the Respondent. For the purposes of this proceeding, the Commission adopts the Heath rate base, as follows:

Gas plant in service	$3,376,776
Construction work in Progress	143,127
Retirement work in progress	3,225
Total	$3,523,128
Less:	
Reserve for depreciation and amortization	491,946
Contributions in aid of construction	7,030
Total Net Investment	$3,024,152
Add:	
Cash working capital (1/8 of operating and maintenance expenses less cost of gas)	56,098
Materials and supplies	124,834
Prepaid accounts	5,725
Average Net Original Cost Rate Base	$3,210,809

Authorized Rates

In the Commission's order of March 26, 1953, in which it authorized Amere to put into effect interim increased rates as of April 1, 1953, the statement was made that higher rates were authorized in the Lewisburg-White Sulphur Springs and Princeton-Athens areas than in the Beckley-Mullens area because from the beginning of the company the Beckley-Mullens area had enjoyed a much lower rate due primarily to the availability of locally produced gas. The Lewisburg-White Sulphur Springs area and the Princeton-Athens area have always been supplied gas from Atlantic's 20-inch line. The interim rates heretofore mentioned increased gas in the Beckley-Mullens area to a greater extent percentagewise than in the other areas because the evidence in this proceeding indicated

that even in that area gas was required from the Atlantic line on 170 days during 1952, and evidence later introduced by Heath substantiates this by showing that Beckley uses 28.19% of the gas Amere purchases from Atlantic. Under these circumstances the Commission believes that the differential between the rates in the various areas, as established in its order of March 26, 1953, is as equitable an adjustment as can be made, and no change will be made therein.

For the reasons hereinbefore stated, the Commission has determined to accept the operating and maintenance expenses as set forth in the Heath exhibit on Schedule No. 13 in the amount of $1,448,977, adjusted so as to reflect the interim rate increase. The annual gross revenue produced by said interim rates has been determined to be $1,650,402, which indicates an expected net operating revenue of $201,425. In earning such net revenue, the Respondent will have a return of 6.27% on its average net original cost rate base of $3,210,809, as established under the heading "Rate Base." For a gas utility of this type and size, the Commission determines that 6.27% is a fair return, and, therefore, no changes will be made in the interim rates heretofore established, and said rates will be made permanent.

An order will be entered in accordance with the findings herein.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, at the Capitol in the City of Charleston on the 31st day of August, A.D. 1953.

Case No. 3888

AMERE GAS UTILITIES COMPANY, a Corporation, Investigation and Suspension of Rates and Charges

This proceeding came on to be heard this 31st day of August, 1953, upon the revised tariff sheets offered for filing by Amere Gas Utilities Company, a corporation, hereinafter called "Respondent," designated Third Revision of Original Sheet No. 8 to its Tariff P. S. C. W. Va. No. 2 and Second Revision of Original Sheet No. 8-A to said tariff, which said new revisions cancel Second Revision and First Revision, respectively, of said sheets in said tariff, and state increased rates and charges for furnishing natural gas service to its customers in West Virginia, except sales to Bluefield Gas Company; upon the order entered herein on January 8, 1953, setting said matter down for hearing and suspending the use of the aforesaid rates and charges until June 10, 1953, unless otherwise ordered by the Commission; upon proof of the giving of notice as required by said last mentioned order; upon the protests noted in the hereinafter mentioned report; upon the evidence adduced at hearings held herein on February 24, May 11, and June 2, 1953; upon the order entered herein on March 26, 1953, authorizing the Respondent to put into effect temporary increases in its rates and charges, effective April 1, 1953; upon the order entered herein on June 3, 1953, further suspending the proposed rates and charges until December 10, 1953, unless otherwise ordered by the Commission; upon the briefs filed on behalf of the Respondent and the protestants; and upon the report of the Commission made this day and now filed herein and made a part hereof.

Upon consideration whereof and for the reasons set out in the aforesaid report, the Commission is of opinion and

finds that the rates and charges stated in the aforementioned revised tariff sheets are not just and reasonable in that same would produce more revenue than is required to enable the Respondent to pay its reasonable and necessary operating expenses, including taxes, and to provide for depreciation in and a return on its property used and useful in furnishing said gas service; that said tariff sheets should be canceled and stricken from the tariff files of the Commission; that the interim rates and charges the Respondent now has in effect, as authorized by the order entered herein on March 26, 1953, are just and reasonable and, if properly applied, should produce sufficient revenue for the above mentioned purposes; and that said interim rates now in effect should be made permanent.

It is, therefore, ordered tht the revised tariff sheets offered for filing by Amere Gas Utilities Company, a corporation, designated Third Revision of Original Sheet No. 8 to its Tariff P. S. C. W. Va. No. 2 and Second Revision of Original Sheet No. 8-A to said tariff, be, and they hereby are, canceled and stricken from the tariff files of the Commission.

It is further ordered that the Respondent, Amere Gas Utilities Company, a corporation, be, and it hereby is, permitted and authorized to continue in effect on a permanent basis the rates and charges authorized in the order entered herein on March 26, 1953, for all gas furnished by it in West Virginia, except for gas furnished Bluefield Gas Company.

A Copy.

Teste: M. F. WRIGHT, JR.
Secretary.

APPENDIX F

Chapter 24, Article 5, Section 1 of the Official Code of West Virginia of 1931, as amended, provides as follows:

"Any party feeling aggrieved by the entry of a final order by the commission, affecting him or it, may present a petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within thirty days after the entry of such order, praying for the suspension of such final order. The applicant shall deliver a copy of such petition to the secretary of the commission before presenting the same to the court or the judge. The court or judge shall fix a time for the hearing on the application, but such hearing, unless by agreement of the parties, shall not be held sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable. For such hearing the commission shall file with the clerk of said court all papers, documents, evidence and records or certified copies thereof as were before the commission at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The commission shall file with the court before the day fixed for the final hearing a written statement of its reasons for the entry of such order, and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right."

No. 751. AMERE GAS UTILITIES CO. *v.* PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. Appeal from the Supreme Court of Appeals of West Virginia. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. *Charles C. Wise, Jr.* and *Tilford A. Jones* for appellant.